

Chapter 34, Statutes of 2004 (SB 899)

Changes to the Workers' Compensation System

On April 19, 2004, Senate Bill 899 became law. This is an urgency statute and its provisions are effective immediately unless a future effective date is specified. This bill makes a number of substantial changes to the California Workers' Compensation System. A brief summary of these changes follows.

Burden of Proof:

- This bill states that all parties to a workers' compensation claim are equal before the law and must meet the burden of proof by a preponderance of evidence.
- It does not repeal the liberal construction clause found in Labor Code Section 3202.

Medical Legal Evaluations:

- This bill makes major changes to the process of obtaining medical legal evaluations to resolve disputed medical issues.
- If the employee is not represented by an attorney:
 - Either party may request a list of three Qualified Medical Evaluators from the Division of Workers' Compensation.
 - However, the employer must first provide the appropriate form to the employee and ask that the employee request a list.
 - If the employee does not make the request within 10 days, the employer may submit the request.
 - Once the list is issued, the employee has 10 days to choose a physician and set an appointment.
 - If the employee fails to do so, the employer can choose a physician and set the appointment.
- If the employee is represented by an attorney:
 - The parties should first attempt to choose a physician to examine the employee and make a determination.
 - If the parties cannot agree to an Agreed Medical Evaluator, either party can request a list of three physicians from the Division of Workers' Compensation.
 - The parties should attempt to agree to use one of these physicians to resolve the issues.
 - If that fails, each party can strike one physician from the list and the remaining physician will perform the evaluation.
 - This section is effective January 1, 2005 for all dates of injury. However, the legislation repeals all of the existing medical legal evaluation procedures as of April 19, 2004, it is not clear what process will be used to resolve disputes between April 19, 2004 and January 1, 2005.
- If the employee is treating with the employer's medical provider network and the employee disputes the diagnosis or treatment plan:
 - The employee can request a second and third opinion from a different physician within the network.
 - If the employee still disputes the diagnosis or treatment plan, they can request that the Division of Workers' Compensation assign an Independent Medical Reviewer.

- The Independent Medical Reviewer will examine the employee and issue a report to resolve the dispute.
- If the employer delays, denies or alters the treating physician's treatment recommendation, the medical utilization review process must be exhausted before the employee can request a medical legal evaluation.
- Once an employee is evaluated by a physician under these provisions, the employee is not entitled to any additional medical evaluations if they later become represented by an attorney or dismiss their attorney.

Treating Physician's Presumption:

- The presumption that the treating physician is correct is repealed.
- This applies to all unresolved cases as of April 19, 2004.

Medical Care:

- Reasonable medical care is defined as medical care that conforms to the guidelines adopted by the Division of Workers' Compensation.
 - Until those guidelines are adopted, the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines will be used.
- This bill allows for the creation of medical provider networks by the employer.
 - If the employer, or the employer's adjusting agent, provides a medical provider network, the employee cannot seek treatment outside of the network unless the network can not provide the appropriate specialty or the employee successfully challenges the diagnosis or treatment plan by going to an Independent Medical Reviewer assigned by the Division of Workers' Compensation.
 - The State agencies should use the medical provider network that State Compensation Insurance Fund has established.
 - To find a physician, the employing agency can call 1-888-222-3211 or go on-line at <http://www.geoaccess.com/SCIF/po/begin.asp>.
 - This section is effective January 1, 2005.
- The employee can select his or her own physician after 30 days unless the employer has established a medical provider network.
 - This section is effective immediately, but, since the provision that allows the employer to create a medical provider network is not effective until January 1, 2005, this section cannot be implemented until then.
- If the employer provides health care coverage for its employees, the employee can opt to be treated by his or her regular physician from the start as long as the employee notified the employer of the selection before the date of injury.
- Chiropractic and physical therapy visits are already limited to 24 each. This bill would also limit occupational therapy visits to 24.

Immediate Medical Coverage:

- The employer is responsible for any medical care that occurs while the liability decision is being made.
 - It is important to promptly provide workers with a claim form and to exercise medical control by referring the employee to an appropriate physician if the employee has not pre-designated his or her regular physician.

- Once the claim form is filed the employer becomes liable for the medical care.
- Liability is capped at \$10,000 for such treatment.

Temporary Disability:

- This bill limits temporary disability to 104 weeks within two years of the date of commencement unless the injury consists of:
 - Acute and chronic hepatitis B or C
 - Amputations
 - Severe burns
 - Human immunodeficiency virus (HIV)
 - High-velocity eye injuries
 - Chemical burns to the eyes
 - Pulmonary fibrosis
 - Chronic lung disease
- In these cases, temporary disability is limited to 240 weeks within five years from the date of injury.
- The temporary disability provisions are effective immediately, but only apply to dates of injury on or after April 19, 2004.

Permanent Disability:

- This bill reduces the permanent disability benefits for those injuries that result in less than 15 percent impairment and increases the permanent disability benefits if the impairment is 70 percent or higher, but less than 100 percent.
- Whether or not the employee returns to work will affect the permanent disability benefits.
 - Permanent disability payments will be increased by 15 percent after the first 60 days if the employer is unable to offer the employee a job that the employee is capable of performing.
 - The payments will be reduced 15 percent if the employer can offer the employee a position.
 - If the employer terminates the position before the permanent disability payments end, the remaining payments will return to the original amount and be increased by 15 percent. In its current form, this section does not exempt the employer if the employee is terminated for cause.
- The permanent disability provisions will be effective as soon as the Division of Workers' Compensation issues a revised permanent disability schedule. The release of the revised schedule is expected by January 1, 2005.
- These provisions will apply to any date of injury as long as there has not been a final medical report indicating the existence or absence of permanent disability.
- The Division of Workers' Compensation has been directed to issue a new permanent disability rating schedule utilizing the American Medical Association Guides to the Evaluation of Permanent Impairment and empirical data regarding diminished future earnings capacity.

Apportionment:

- Any physician who addresses permanent disability is required to address apportionment.
- The physician will determine what percent of the permanent disability was caused by the industrial injury and the employee is required to disclose any prior permanent disabilities or impairments.
- The employer is only liable for permanent disability actually caused by the industrial injury.
- Any prior permanent disability award is conclusively presumed to still exist.
- An employee cannot accumulate more than 100 percent permanent disability in a body region unless the employee is conclusively presumed to be 100 percent permanent disabled. The body regions are:
 - Hearing.
 - Vision.
 - Mental and behavioral disorders.
 - The spine.
 - The upper extremities, including the shoulders.
 - The lower extremities, including the hip joints.
 - The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed above.

Penalties:

- Labor Code section 5814 is repealed.
- The new penalty provision awards penalties equal to 25 percent of the amount that was unreasonably delayed or denied, up to \$10,000.
- If the employer discovers a potential penalty before the employee and pays the benefits owed plus a 10 percent penalty, the employer will not be liable for the 25 percent penalty.
- An award, compromise and release, or stipulation will be presumed to resolve all penalty issues for actions prior to the resolution of the claim unless those penalties are specifically exempted from the resolution.
- Any automatic penalty that the employer pays under Labor Code 4650 will be credited against a penalty awarded under Labor Code 5814 for the same action.
- Billing disputes with medical providers are not considered to be unreasonable and subject to penalties.
- The employee must claim any penalty within 2 years of the date the payment was due.
- If there is evidence that the employer systematically violates the prohibition against unreasonable delays and denials, the Division of Workers' Compensation can assess penalties up to \$400,000.
- The penalty provisions are effective on June 1, 2004 for all dates of injury.

Vocational Rehabilitation:

- This bill added back the text for vocational rehabilitation relative to injuries prior to January 1, 2004.
- This section only applies to injuries prior to January 1, 2004 and will be repealed on January 1, 2009.

Reporting Fraud:

- This bill provides protection from civil liability for any party that reports any apparent workers' compensation fraud as long as the party acts in good faith.

Funding:

- This bill restores funding for the Division of Workers' Compensation.

Union Negotiations:

- SB 899 expands the options for employers and unions to negotiate agreements regarding the delivery of medical and disability benefits when the employees are eligible for group health insurance and non-industrial disability insurance through the employer.

Additional information can be found at the websites listed below.

Summaries prepared by the Commission on Health, Safety and Workers' Compensation:
<http://www.dir.ca.gov/CHSWC/chswc.html>

Summaries prepared by the State Compensation Insurance Fund:
http://www.scif.com/news-info/press/reform_mailing_5-04.htm

Keith Mentzer	(916) 445-9792
Department of Personnel Administration	keithmentzer@dpa.ca.gov
